

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3	Suzanne Ivie,	)	
		)	
4	Plaintiff,	)	3:19-cv-01657-JR
		)	
5	vs.	)	June 7, 2021
		)	
6	AstraZeneca Pharmaceuticals, LP,	)	Portland, Oregon
		)	
7	Defendant.	)	

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9  
10 (Pretrial Conference Hearing)

11 BEFORE THE HONORABLE JOLIE A. RUSSO

12 UNITED STATES DISTRICT COURT MAGISTRATE  
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## INDEX

Pretrial conference hearing

4

1 (June 7, 2021)

2 P R O C E E D I N G S

3 (Video pretrial conference hearing:)

4 THE CLERK: We are here on the case of Ivie versus  
5 AstraZeneca Pharmaceuticals, LP, Civil Case  
6 No. 3:19-cv-1657-JR.

7 Counsel for plaintiffs, would you identify yourselves  
8 for the record.

9 MR. OSWALD: Scott Oswald and Anita Chambers for  
10 Suzanne Ivie.

11 Your Honor, I think that Peter Planeuff (phonetic),  
12 who is our tech guru, will be joining us for the tech portion.  
13 Then we have a law clerk and one of our other lawyers may log  
14 in, but they will turn their cameras off. They just want to be  
15 here at the hearing.

16 THE COURT: Okay. Thank you.

17 MR. OSWALD: Thank you.

18 THE COURT: Can we then have counsel for the  
19 defendant identify themselves, please, starting with  
20 AstraZeneca.

21 MS. RIECHERT: This is Melinda Riechert. I am  
22 counsel for AstraZeneca from Morgan Lewis.

23 THE COURT: Okay.

24 MR. MCCARTHY: Ryan McCarthy also with Morgan Lewis  
25 for AstraZeneca.

1 THE CLERK: Ryan McCarthy?

2 MR. McCARTHY: Yes, sir.

3 MS. TALCOTT: Anne Talcott is also on for  
4 AstraZeneca, and I believe one of my colleagues at Schwabe is  
5 on, Tom Payne. He is attending to help us. He will be a  
6 scrivener today for our side.

7 THE CLERK: Your Honor, we are ready to begin.

8 THE COURT: Thank you. Again, welcome. It is nice  
9 to see everybody. I am looking forward, I think, to trial  
10 beginning June 14th, 2021, on Monday at 1:00 p.m. As I  
11 indicated at a prior telephone status conference, you're  
12 welcome to come as early as 8:00 a.m. I will open the doors of  
13 Courtroom 14B at 8:00 a.m. on Monday. You're welcome to come  
14 set up.

15 There is a lot to cover today. You folks are  
16 certainly thorough and comprehensive in all of your filings. I  
17 appreciate it. We spent a tremendous amount of time going  
18 through everything. My intent is to work through all of the  
19 motions and the witness and exhibit objections and then end  
20 with any questions that you might have about procedures or any  
21 specific trial questions that you have.

22 I also wanted to let you know that I have drafted  
23 voir dire. That was based exclusively on the questions that  
24 you agreed to and submitted to the Court.

25 I have also drafted preliminary instructions. Those

1 instructions will be given by the Court after the jury is  
2 seated and before opening statements. Those preliminary  
3 injunction instructions are based exclusively on model Ninth  
4 Circuit jury instructions.

5 I will hold a jury instruction conference with the  
6 lawyers as we get into trial. At that time I will distribute a  
7 copy of the jury instructions that I intend to give to the  
8 jury. We can discuss them. I may or may not change my mind  
9 about some of them. You may then make any objections to those  
10 instructions. I will also discuss the verdict form at that  
11 time, so you will know in advance and have a copy of both the  
12 instructions and the verdict form.

13 In terms of argument this afternoon about all of  
14 these motions and objections, really, I have read absolutely  
15 everything you have submitted as well as done a fair amount of  
16 case research. So my intent is to simply go through all of  
17 these objections and motions and then have you folks make  
18 notes. At the end, if there is just some argument that you  
19 feel compelled to make that perhaps you didn't make in your  
20 briefing, then I'm happy to hear that.

21 I'm going to start with the three most recent motions  
22 that were filed -- I think they were filed on Friday and  
23 Saturday -- concerning remote testimony. The first at issue is  
24 Document 118. That is plaintiff's expedited motion to compel  
25 defendant to produce Mr. Pomponi as a witness at trial. That

1 motion is denied. The Court lacks authority to compel  
2 Mr. Pomponi's appearance in the District of Oregon.

3 Next is Document 120. That is plaintiff's renewed  
4 motion to take the testimony of certain witnesses at trial.  
5 That motion is granted in part and denied in part. The  
6 plaintiff may take the testimony by video conference of the two  
7 doctors, Drs. Johnson and Byrne, I think, are their names.

8 They are both two-hour plane flights from this  
9 district. Frankly, I'm less persuaded by the Advisory  
10 Committee's standard, good cause and compelling circumstances,  
11 noting that that standard is now 25 years old and everything  
12 remote has changed in that time. I'm, frankly, more persuaded  
13 by cases -- all post-1996 -- that were cited by plaintiff on  
14 page 3 of her motion. However, I am denying plaintiff's motion  
15 regarding Mr. Hinson. I am find that a preplanned vacation to  
16 Hawaii known for more than a year clearly does not fit within  
17 Rule 43's exception.

18 Finally, regarding Mr. Pomponi, and this, again, is  
19 regarding Document 120 as well as Document 121, and that is  
20 defendant's motion to strike plaintiff's supplemental witness  
21 statement.

22 A question first to defense counsel: Is the  
23 defendant producing all other employee witnesses?

24 MS. RIECHERT: Your Honor, this is Melinda Riechert.  
25 All of the other defense witnesses will be appearing in person.

1 THE COURT: Thank you.

2 I will allow plaintiff to take Mr. Pomponi's -- to  
3 produce his testimony via video conference. Mr. Pomponi was  
4 listed on plaintiff's May 10th witness list. On May 17th,  
5 there was a phone call between counsel confirming that he would  
6 be called as plaintiff's first witness in its case-in-chief.  
7 Then there was an email confirming the above and that plaintiff  
8 did not send subpoenas for defendant's witnesses.

9 Finally, on June 3rd, plaintiff submitted a  
10 supplemental witness statement that was "inadvertently  
11 omitted." Again, I will allow his testimony via video  
12 conference. I will deny defendant's motion to strike  
13 plaintiff's supplemental witness statement. That, again, is  
14 Document 121. However, defendant may file any objections to  
15 this witness statement by Friday.

16 I am now going to move to plaintiff's motions in  
17 limine. There are three. That is Document 70. Plaintiff's  
18 first motion is to exclude testimony related to plaintiff  
19 obtaining counsel during employment. That motion is granted  
20 pursuant to 403. I find that more prejudicial than probative.  
21 I also note that the Nevada cases relied on by the defendant  
22 rely on state law rather than the Federal Rules of Evidence.

23 Regarding plaintiff's motion in limine No. 2, it is  
24 unopposed by defendant and therefore denied as moot.

25 Plaintiff's motion number 3 to exclude the testimony



1 of five individuals, and those are Barnes, Thomsen, Griffith,  
2 Skinner, and Stickle -- and that includes plaintiff's  
3 supplemental motion, Document 104. That motion is denied. I  
4 will allow that testimony. However, I intend to listen  
5 carefully for any duplicative or unfounded or unduly  
6 prejudicial testimony.

7           Moving now to defendant's motion in limine, there are  
8 nine of those. That is Document 81. Motion 1 through 3 are  
9 denied as moot, as the parties were able to resolve those  
10 motions. Thank you.

11           Moving now to motion 4, defendant moves to exclude  
12 testimony about witnesses' motive. That motion is granted in  
13 part and denied in part. Those witnesses may testify but will  
14 be limited the testimony to their personal factual observations  
15 about DiNunzio's behavior toward her other employees. There  
16 will be no testimony that results in legal conclusions or  
17 speculation. That would be barred by FRE 602 and 701.

18           Moving to motion 5, plaintiff moves to exclude  
19 workplace conflicts. That motion is denied. I find the  
20 evidence relevant, pursuant to 401, and more probative than  
21 prejudicial, pursuant to 403. However, defendant may certainly  
22 object during trial if either hearsay becomes an issue or the  
23 testimony goes too far astray.

24           Regarding motion 6, defendant moves to exclude other  
25 employees' reputational evidence. That motion is denied. I

1 find no difference between plaintiff's request and the  
2 defendant's five witnesses -- Barnes, Thomsen, Griffith,  
3 Skinner and Stickle -- relying on FRE 701 and opinion  
4 testimony. Those witnesses may testify as to their personal  
5 experiences working with plaintiff. However, again, I'm going  
6 to watch closely for duplicative or unduly prejudicial  
7 testimony.

8           Moving to motion 7, defendant needs to exclude  
9 evidence of other employees' experience with DiNunzio, that  
10 motion is denied. Evidence is allowed under 404(b)(2), a  
11 pattern or history of similar age-related instances goes  
12 directly to defendant's motive for pretext. I also note that  
13 the Ninth Circuit has long recognized that, in the context of  
14 Title VII, evidence of employer's treatment of other employees  
15 who were also members of plaintiff's protected class is both  
16 relevant and admissible.

17           Moving to motion 8, defendant moves to exclude  
18 evidence of the outcome of the internal investigation into  
19 alleged off-label promotional issues raised by defendant. That  
20 motion is denied. Here, I think the issue is not whether  
21 plaintiff had reasonable cause to make her complaint but rather  
22 whether raising the off-branding issue was the true cause of  
23 plaintiff's termination. And so because pretext is at issue in  
24 the case, the evidence of the thoroughness of any investigation  
25 is relevant to pretext.

1           Finally, motion nine, defendant's motion to exclude  
2 evidence of the prior integrity agreement and prior settlement,  
3 that motion is denied. Unlike a private settlement, this  
4 document is publicly available. I find the evidence bears on  
5 defendant's potential motive and pretext, and the individuals  
6 involved all have personal knowledge of investigating  
7 plaintiff's complaint.

8           Moving next to plaintiff's witnesses, I note the  
9 plaintiff intends to call 17 witness for a total testimony time  
10 for approximately 14 hours.

11           The parties, as you know, stipulated to Mr. Edelman's  
12 remote testimony. The defendant intends to call witnesses for  
13 similar testimony time of, again, approximately 14 hours.

14           Plaintiffs have filed objections to Griffith,  
15 Skinner, Stickle, Thomsen, and Barnes. That is the subject of  
16 plaintiff's third motion in limine. Plaintiff also filed an  
17 objection to Ms. Hamilton, Document 94.

18           I am going to allow Ms. Hamilton's testimony. I find  
19 that it seems to be largely background info. about the company  
20 and job responsibilities, which I deem to be neither irrelevant  
21 nor prejudicial.

22           I am now moving to defendant's objections to  
23 plaintiff's witnesses. Defendant filed objections to Drs.  
24 Johnson and Byrne as well as individuals Hinson, Capell, and  
25 Gibbs. They are all offering testimony related to plaintiff's

1 damages. Those individuals are limited to testifying about  
2 their relationship with and first-hand observation of  
3 plaintiff. I agree with defendant that rephrasing plaintiff's  
4 comments or providing an explanation for purported changes in  
5 plaintiff's demeanor and actions are hearsay and will not be  
6 allowed. I note, in addition, that neither Dr. Johnson or  
7 Dr. Bryne has been identified as a medical expert.

8 Defendant has also filed objections to Smith,  
9 plaintiff's rebuttal expert, and another expert, Severt. I'm  
10 sustaining defendant's objection to Smith's testimony. Smith  
11 has no personal knowledge of plaintiff's work reputation, and  
12 his testimony about his own experience with DiNunzio is not  
13 relevant.

14 Regarding the expert, Severt, he may testify, but he  
15 cannot offer an opinion as to any issue that is not covered by  
16 his reports or that concern plaintiff's mental or emotional  
17 condition, including any alleged issue she has with migraine  
18 headaches, as he is not a medical specialist.

19 Defendant also objects to Severt's testimony that he  
20 intends to testify that plaintiff's story is not uncommon for  
21 whistleblowers; that they oftentimes end up having to take a  
22 job that is not part of their work history. However, given his  
23 area of expertise, the factual nature of his testimony, and  
24 defendant's lack of objection to his qualifications, this  
25 testimony is admissible.

1           Finally, plaintiff designates testimony from Welch's  
2 deposition. I am going to allow that deposition testimony  
3 along with defendant's counter-designations.

4           I think we can now move to exhibits. Plaintiff has  
5 objected to seven of defendant's exhibits, beginning with 536.  
6 It looks like 536, 537, 538, and 555 should all be granted, as  
7 those exhibits were not produced in discovery. The only reason  
8 they shouldn't be granted is if defendant can somehow show that  
9 their failure to produce these exhibits were either harmless or  
10 justified; otherwise 536, 537, 538, and 555 are excluded.

11           Moving to 551, that objection is granted. 403,  
12 unduly prejudicial objection.

13           552 is overruled. This evidence is relevant. I  
14 don't see a problem with 403. 552 is overruled.

15           554, that objection is granted. This evidence is not  
16 relevant.

17           I already mentioned 555.

18           Those are plaintiff's seven objections to defendant's  
19 exhibits.

20           Moving to defendant's objections to plaintiff's  
21 exhibits --

22           MR. OSWALD: Your Honor, I apologize for  
23 interrupting. We had come to an agreement on, I think, many of  
24 these. I might be able to lighten your load just a little bit.  
25 I think we have a disagreement on just a few that remain. Let

1 me see here -- one second. I had it up and then I moved.

2 We met and conferred on this last week and had come  
3 to an agreement. I know you were going to read some  
4 preliminary instructions. One of the agreements that we came  
5 to was -- assuming that you approve -- would be one preliminary  
6 instruction. It is -- forgive me. I don't know if we have  
7 submitted our updated jury instructions. There are some that  
8 we have in fact agreed upon with the Court, but we also agreed  
9 that we would -- assuming you would agree -- that you would  
10 read that preliminary instruction, and that would resolve the  
11 concern about many of the exhibits.

12 Exhibits that remain are -- forgive me. I had it on  
13 my screen.

14 MR. McCARTHY: Scott, I have it here. I can start  
15 reading them off.

16 MR. OSWALD: I would appreciate right.

17 MR. McCARTHY: As Mr. Oswald correctly noted, we very  
18 recently came to an agreement on some of these. I apologize we  
19 weren't able to get them to you sooner, Judge.

20 Here are the ones that we think are still at issue.  
21 I can either read them off, and we can talk about them, or,  
22 Judge, I could just read the series if you want to note them.

23 THE COURT: So you are reading the plaintiff's  
24 exhibits that are objected to by defendant, correct?

25 MR. McCARTHY: Correct. That are still live

1 disputes.

2 THE COURT: Perfect. If you would read me the  
3 numbers, I would appreciate it. Thank you.

4 MR. McCARTHY: I have 1 through 4, 11 -- and I should  
5 say, Judge, I am excluding those that are resolved by a ruling  
6 on the motion in limine as well obviously.

7 THE COURT: Perfect. Thank you.

8 MR. McCARTHY: 11, 20, 36, 37, 41, 58, 59, 64, 88,  
9 97, 98, 103, 105, 107, 109, 124; the medical records that are  
10 Exhibits 127 through 133; 134, 144 through 146, 148 through  
11 158, 164, 167 through 169, 171 through 176, 178, 179, and 182.

12 THE COURT: Okay. Thank you. I do appreciate your  
13 conferral and ability to come to an agreement on some of these  
14 objections. I think I had initially counted 93. So this looks  
15 better. Thank you very much.

16 I will go through and give you my rulings on the  
17 objections that remain at issue.

18 1 through 4 -- now, 2 through 4, I don't have  
19 objected to. I just have Exhibit No. 1.

20 So are you adding 2 through 4?

21 MR. McCARTHY: Judge, I'm looking at Document 97. On  
22 the chart on the second page, at least on my copy, we did have  
23 objections to 2 through 4.

24 THE COURT: I think now that you have reached an  
25 agreement on well over half, I want to now go back and look,

1 just before I start ruling, just really make sure that I have  
2 exactly the correct exhibit and take a look at it again. So I  
3 will do that, and I will have the rulings on the list of  
4 plaintiff's exhibits that you have just read to me by tonight.

5 MR. MCCARTHY: Thank you, Your Honor.

6 THE COURT: That, I think -- and I'm sure you were  
7 checking me -- takes care of everything that I had on my list  
8 that we needed to accomplish today other than talking about any  
9 questions about the trial itself or procedures.

10 I think I did just get, before I took the bench, an  
11 email that indicated that amended jury instructions were filed,  
12 so I think I did just receive those.

13 I'm happy to hear from either side about any  
14 questions about trial procedures.

15 MR. MCCARTHY: Judge, may I ask a clarifying question  
16 with respect to your rulings -- this is on plaintiff's  
17 objection to AstraZeneca exhibits, Document 94?

18 Let me know when you are there, Judge

19 THE COURT: I'm there.

20 MR. MCCARTHY: The one I wanted to clarify, Judge, is  
21 564. Now my understanding is that there was an objection to  
22 certain lines of text messages on that exhibit that apply to  
23 424 through 427. We would agree, Your Honor, those lines are  
24 not relevant, but there is other content in that text message  
25 that we think is relevant, and we don't think it's objected to.



1 So absent an objection, we will simply request to redact the  
2 irrelevant lines off of that exhibit.

3 THE COURT: I think that's correct. I have text  
4 messages on line 424 through 427. Those are the lines between  
5 plaintiffs and a non-defense employee; is that correct?

6 MR. McCARTHY: Correct, Your Honor.

7 THE COURT: Any objection to that?

8 MS. CHAMBERS: Ryan, to clarify, you want to redact  
9 the text messages?

10 MR. McCARTHY: That's correct, Anita. We agree that  
11 lines 424 through 427 are not relevant, and we don't want to  
12 show them to the jury. I am just proposing that we can use the  
13 rest of the text message and simply redact that so nobody sees  
14 it.

15 MS. CHAMBERS: Yes. We agree. The objection was on  
16 that one portion.

17 MR. McCARTHY: Sure.

18 MR. OSWALD: Your Honor, I would like to be heard on  
19 three documents that remain outstanding.

20 MR. McCARTHY: I have one other item.

21 MR. OSWALD: Of course, Ryan. Excuse me.

22 MR. McCARTHY: If I may.

23 Judge, the first few exhibits you discussed, the  
24 objection was related to AstraZeneca not producing those  
25 documents in discovery. I understand you may not want to hear

1 argument on that right now, Judge, but may we submit  
2 information to you as to why those documents were outside the  
3 scope of production, and if so, how shall we do that?

4 THE COURT: You are welcome to do that. Either  
5 email -- copy the other side -- that's probably the quickest,  
6 frankly. Then the other side is welcome to file a quick  
7 response.

8 MR. MCCARTHY: Thank you.

9 THE COURT: Thank you.

10 Sir.

11 MR. OSWALD: Your Honor, if I could be heard on three  
12 documents. You haven't ruled on those yet, but they do remain  
13 objected to. They are documents 37, 41, and 59.

14 THE COURT: 37, 41, and 59?

15 MR. OSWALD: That's right. Let me take each one in  
16 turn.

17 37 is an email from Ms. Ivie to her human resources  
18 representatives on May 8th, 2019. What she is doing is  
19 responding to a meeting that they had with her during the  
20 course of their human resources investigation. The defendant  
21 objects on the basis that it is hearsay; that these are  
22 statements that she is making about what they said -- what the  
23 human resources representative said at the hearing itself. I  
24 believe it is non-hearsay, as you look at it under 801(d)(2)  
25 (B)(2) as an adopted admission.

1           So what is happening at this point is that she is  
2 being told information about the status of the investigation.  
3 She writes back and says, "I want to make sure I have got this  
4 right. Is this right?" She then sends it to the human  
5 resources representative.

6           There is no document in response at all to her email,  
7 and that, I think, is critical. We have two individuals who  
8 are tasked with the responsibility creating -- investigating  
9 the allegations of discrimination. They are in the course and  
10 conduct of their investigation, and she is memorializing what  
11 happened.

12           Under Section (2) (B) (2), a statement is adopted where  
13 one party has been given -- understands the import of the  
14 statement and has been given an opportunity to respond and then  
15 fails to do so. They then adopt that admission. The  
16 Ninth Circuit in U.S. v. Sears, which is at 663 F.2d 869 at  
17 904, which is Ninth Circuit (1981), describes this. It sets  
18 out a test in which the party receiving the communication must  
19 understand it and then have an opportunity to deny it, to the  
20 extent they believe it is inaccurate.

21           In this case the human resources representatives  
22 adopted a statement by their silence in not responding.  
23 Therefore, it is non-hearsay under 801(d) (2) (B) (2). The  
24 defense position is, well, this is really just her recounting  
25 back what was said to them; therefore, that's not an admission.

1 But it is, because of the fact that it was done directly to  
2 them in their official capacities and indeed they failed to  
3 respond to it. So I believe that they adopted the admission,  
4 and it should be admitted for that reason.

5 The second of these is really the same -- it is the  
6 email that Ms. Ivie sends to human resources. Again, this is  
7 No. 41 in which the -- this is on the 11th of June of 2019.  
8 She is writing back to make sure she understands the reasons  
9 why they have said that they are firing her. Again, this was  
10 an official communication to individuals who are operating in  
11 their human resource capacity to professionals. There is no  
12 response. I believe that under U.S. v. Sears that they have  
13 adopted that -- adopted admissions. So I would ask the Court  
14 to consider that in reviewing those two statements.

15 The last is Exhibit No. 59, and this is an email  
16 exchange that occurs between the human resources  
17 representative, Dawn Ceaser and Barbara McCullough, who is  
18 AstraZeneca's highest ranking compliance official, who is  
19 involved in the compliance investigation. Indeed McCullough  
20 was involved as of the 23rd of January when the case was  
21 escalated to global significance and was on each report that  
22 occurred thereafter.

23 The conversation is about disparate treatment.  
24 Ms. McCullough is inquiring whether Ms. Ivie has accepted the  
25 severance package. One of the concerns that the company had

1 was, as Ms. McCullough recounts, is that the standard that was  
2 used as at least one of the basis for firing Suzanne Ivie was  
3 not consistently applied or communicated, and there was a  
4 concern at AstraZeneca of that.

5 AstraZeneca says, "Well, gee, she wasn't in human  
6 resources. This was somehow secondhand information that she  
7 got from somebody else in the organization." But she's in  
8 precisely the kind of position where she is getting these kind  
9 of reports. The fact that you have a document in which someone  
10 at that level is admitting that the company potentially did not  
11 apply its standards consistently and potentially did not  
12 provide Ms. Ivie with full notice of what the standard was for  
13 at least the initial discipline that was the starting point for  
14 her termination is both relevant, it's material, it's highly  
15 probative, and it would not be any kind of hearsay because, of  
16 course, it deals with directly her admission as to what she  
17 knew and when she knew it.

18 For that reason, I would ask the Court also to find  
19 that Exhibit No. 59 is admissible as well.

20 THE COURT: Okay. Thank you. I appreciate that.

21 MR. MCCARTHY: Can I be heard briefly, Judge, just so  
22 give you context?

23 In discussing these three exhibits with the  
24 plaintiff, our understanding is that plaintiff wants to show  
25 the jury these documents in their opening, and we have

1 particular concerns about that. Your Honor, let me start with  
2 the last exhibit first, No. 59.

3 Ms. McCullough, the person that plaintiff's counsel  
4 refers to, was not deposed in the case. There is no testimony  
5 from her at this point as to what she meant or her foundation  
6 or personal knowledge as to these issues. I will tell you that  
7 when she is called at trial, she will 100 percent disagree with  
8 the assertion that Mr. Oswald made about what she meant. So we  
9 have serious concerns about that being shown to the jury in the  
10 absence of any foundation or witness testimony about that  
11 document.

12 Second, with respect to Exhibits 37 and 41 -- and  
13 I'll address those together -- we feel this is core hearsay.  
14 This is the plaintiff giving her version of events, which  
15 AstraZeneca disagrees with. Now, granted, if the plaintiff  
16 were on the stand, we agree she could testify on the stand and  
17 be subject to cross as to what AstraZeneca's employees said to  
18 her.

19 On that theory she would be testifying about a party  
20 admission. This is not a party admission nor is it an adopted  
21 admission. According to that Sears case that Mr. Oswald  
22 mentions, adopting a standard by which -- I would certainly be  
23 happy to address that case, if you would like, Your Honor --  
24 but adopting a standard by which you could just send someone an  
25 email, and if they don't take exception to it, you've adopted

1 it, I think that's certainly one step too far in this case,  
2 Your Honor.

3 Again, the plaintiff wants to throw these exhibits up  
4 to the jury in opening, essentially letting Ms. Ivie put words  
5 in the mouth of AstraZeneca's witnesses before they testify and  
6 in the absence of any other use as to whether this purported  
7 summary is accurate. So we would ask Your Honor to sustain the  
8 objections on those three exhibits.

9 MR. OSWALD: Your Honor, I just have one point in  
10 rebuttal there. Imagine if the rule were as opposing counsel,  
11 my friend on the other side, represents it. In essence, human  
12 resources, when they send, let's say a subject of an  
13 investigation an email saying, well, here is what you told us,  
14 that that somehow too would be hearsay. It could not be  
15 admitted against the individual. They're certainly not taking  
16 that position. But that's really the other side of the coin.

17 If their position were to be accepted, what it means  
18 is that any communication within the context of investigation  
19 with a witness about what they said is inadmissible, and that  
20 certainly cannot be right. I mean, the implication of that is  
21 breathtaking in terms of how a company goes about their  
22 business and how they go about their investigations. It would  
23 discourage writing things down during investigations.

24 So I think that the -- this is simply, really, the  
25 same as the defendant memorializing a conversation they had

1 with Ms. Ivie, which they will put forward in this case, and  
2 rightly so. It's an admission about what she said at various  
3 meetings. So too, putting forward what she has written  
4 contemporaneously about what they said to her, is equally an  
5 admission under (d) (2) (B) .

6 MR. McCARTHY: Your Honor, I promise this will be  
7 short. I disagree with Mr. Oswald, because the employees for  
8 AstraZeneca, whose job responsibilities include documenting  
9 things like this, creates business records, and those documents  
10 are admissible as business records under the hearsay rule.  
11 This is not a business record. Thanks, Your Honor.

12 THE COURT: Mr. McCarthy, just out of curiosity, if  
13 these exhibits were not used in opening, would you still  
14 object?

15 MR. McCARTHY: We would still object.

16 THE COURT: Okay. Thank you. I appreciate your  
17 arguments. I will give them consideration when I look at the  
18 rest of these objections.

19 Anything else? Or do you folks have questions about  
20 the trial? About the procedures?

21 MR. OSWALD: We have a few, Your Honor. If Peter  
22 Planeuff is with us. Is Peter with us?

23 MR. PLANEUFF: Yes. I had one question about witness  
24 testimony, as far as the technology is concerned. I am  
25 assuming this is the same system we are going to be using for



1 those remote witnesses; is that correct?

2 THE COURT: Ask your question again. I'm looking at  
3 you. And I apologize, sir. Sorry.

4 MR. PLANEUFF: Is this the same system that we will  
5 be using for the remote witnesses and their testimony?

6 THE COURT: Yes.

7 MR. PLANEUFF: Okay. Is it possible to switch  
8 between this system and the system internally to show a  
9 document to the jury? Can we go back and forth between that --  
10 this system we are looking at right now and the local system  
11 that's within the court to show a document?

12 THE CLERK: Your Honor --

13 THE COURT: Go ahead, Mr. Magnuson.

14 THE CLERK: I'm sorry. I believe that it is  
15 possible. We will have to test that out on Monday morning when  
16 we meet the Monday of trial.

17 THE COURT: There is the expert. Here is our expert.

18 MR. McALPIN: This is Pat with IT. We have the  
19 capability between showing the remote witness and showing the  
20 content within the courtroom. We can't display both at the  
21 same time. Typically I will be in the room to accommodate or  
22 assist with that. I'll make the switching happen. We can show  
23 the content to the remote witness, but I recommend they have  
24 hard copies, because a lot of times it is difficult to read the  
25 text, just because it is a small image that they are going to

1 receive at their end. So if you have applications such as  
2 Trial Director or things like that, that assists in being able  
3 to zoom in on portions of the content.

4 MR. PLANEUFF: That was my only question about the  
5 technology.

6 THE COURT: Thank you.

7 MS. RIECHERT: I have a question about the voir dire.  
8 Are we going to be able to see it in advance? And secondly, is  
9 there going to be any attorney voir dire, or is the Court doing  
10 all the voir dire.

11 THE COURT: You will not be able to see it in  
12 advance. But at the end, and I will let the jurors know that  
13 I'm going to give the lawyers a few minutes at the end of the  
14 Court-directed, to ask any follow-up questions in case I've  
15 overlooked something. So no and yes are the answers to the  
16 questions.

17 Let me also -- I'm being reminded -- witnesses will  
18 be excluded from the courtroom, because, remember, there is  
19 nobody allowed in the courtroom other than us.

20 All non-objected exhibits and the exhibits that have  
21 been ruled on will be pre-received into evidence.

22 Finally, I think if I missed a motion, or maybe more  
23 motions to strike replies, those motions are denied.

24 Any additional questions?

25 MR. OSWALD: Your Honor, just a follow-up on the

1 structure of voir dire. So the Court will ask the questions  
2 initially and then you'll give us an opportunity to ask any  
3 follow-up questions. Are we permitted to do that with a group  
4 of the venire?

5 THE COURT: Versus individually going down the line  
6 you mean?

7 MR. OSWALD: Either individually going down the  
8 line -- rather than me postulating, if you could set the scene  
9 for us. So you have gone through, and you have asked them  
10 various questions. Are you bringing them one by one? Are they  
11 writing it on a card? Are you asking in general as a group?  
12 How do you do that?

13 THE COURT: So a group of individuals will come into  
14 the courtroom. I think the jury administrator told me that  
15 we -- I think we can only have -- I can't remember -- don't  
16 quote me -- I'm going to say 18 or 20 or so in the courtroom.  
17 So that group is in. There will be a poster board up with very  
18 basic -- I think five or six basic questions. I will introduce  
19 myself, introduce court staff, asking does anybody know any of  
20 the folks I introduced. I will introduce the lawyers. If  
21 there is somebody at the lawyer tables that I don't know, I  
22 will ask you folks to please introduce everybody at your table  
23 or sitting in the back.

24 The poster board will ask every person to -- perfect.  
25 Mr. Magnuson just brought it in. Your full name. Where you

1 are employed. Where it is relevant, where your spouse or  
2 partner is employed. Generally what part of town do you reside  
3 in. We don't need your address. It is generally about your  
4 family. For example, I live with my spouse and eight-year-old  
5 son. Names are not necessary. Education and any special  
6 training. Then basically what do you do in your spare time.  
7 So that will be the introduction.

8 Thank you, Gary.

9 I then will ask the lawyers to read the list of  
10 witnesses. You will read that entire list. I will ask the  
11 jurors if they recognize any of the names. If they do, raise  
12 their hands. The mike goes to them, and they state their  
13 affiliation with the witness. I then ask some additional  
14 questions -- actually quite a few based on the number of  
15 questions that you submitted to me. I think there are 25 of  
16 them. They start pretty broad and simple, like, have you or a  
17 family member ever been involved in a lawsuit?

18 I then talk very briefly about a civil case; the  
19 burden of proof versus a criminal case.

20 Is there anyone present who would hold the plaintiff  
21 to a higher burden of proof than preponderance of the evidence?  
22 Again, these questions are from your questions.

23 The fact that a defendant is a corporation; would  
24 that affect your ability to be fair?

25 I then go into some questions about AstraZeneca; the

1 COVID vaccine, any bias or feelings.

2 Then I go into quite a few employment questions.

3 Have you or a family member ever been treated unfairly by an  
4 employer? Had a bad experience? Ever been fired? Have you  
5 ever taken a medical leave of absence? Have you ever been  
6 involved in a dispute with an employer? Disciplined or  
7 counseled an employee? Does your current or prior employment  
8 involve supervising people? Have you had to hire or fire.  
9 Have you or family ever had to report misconduct at work by  
10 another employee to management?

11 Have you ever made any type of claim against an  
12 employer, including a discrimination claim? Have you ever been  
13 accused of discriminating against somebody? Have you or your  
14 family ever been subjected to age discrimination in the  
15 workplace? Have you ever been denied a promotion, not hired,  
16 terminated for illegal reasons, such as race, gender, age?

17 Then do they have any education around  
18 discrimination? Attended a seminar, educational, informative  
19 course? Provided materials on discrimination? Have you been  
20 treated for some form of emotional distress in the last ten  
21 years?

22 And then specific questions about employment and  
23 training: Have you been trained in medicine, pharmacy, or any  
24 healthcare field? Have you been able to work as a  
25 pharmaceutical sales rep? Worked for a pharmaceutical company?

1     Worked for Medicare or an insurance company?

2             And finally, the standard: Is there any reason I  
3     have not covered that you might be unable to be fair and  
4     impartial to both parties in this case, give them your full  
5     attention, and serve as a juror with an open mind this week and  
6     possibly into the following Monday? I will now allow each  
7     attorney a few minutes to follow-up on any questions I might  
8     have missed with you.

9             As they raise their hand and disclose an answer to  
10    the question, sometimes, as you know, the answer is so obvious  
11    that the juror is just excused. When that happens, the jury  
12    administrator will have a line of jurors outside the courtroom,  
13    and so the one juror will leave and the next juror will come  
14    in. That's how that's going to work.

15            MR. OSWALD: And you are taking the answers from the  
16    folks in the venire as a group. So they're not coming up, as  
17    an example, to you and talking about it with you. They get a  
18    microphone and they then reveal their answer?

19            THE COURT: You're exactly right.

20            I do say at the beginning -- I'm always sensitive. I  
21    don't want to embarrass anybody certainly. These questions are  
22    for the purposes of allowing the lawyers to learn a little bit  
23    more about you. But I am sensitive to some of the questions  
24    may cause them some discomfort to answer in front of the group.

25            MR. OSWALD: In those cases, what do you do?

1           THE COURT: Typically -- I say that if you are not  
2 comfortable answering in front of the group, just wave your  
3 hand and indicate that, and they are welcome to have a  
4 conversation with me.

5           MR. OSWALD: Understood.

6           MS. RIECHERT: Can you remind me how many challenges  
7 we will get.

8           THE COURT: Mr. Magnuson.

9           THE CLERK: You each get three challenges.

10          MR. OSWALD: And the for cause challenges, when do  
11 you want them?

12          MS. RIECHERT: And how?

13          THE CLERK: The challenges, I would do when we are  
14 doing the jury selection. I'm not sure exactly -- I forget in  
15 our prior conversation how we were going to do jury selection,  
16 if we were going to go for our normal standard, Your Honor, of  
17 doing it in the courtroom or going out.

18          THE COURT: I think we can probably do it in the  
19 courtroom like we always do it.

20          THE CLERK: What I do is I have a list that I create  
21 as the jurors are selected, and I walk back and forth between  
22 counsel table, or however, we might try to do it this way, and  
23 let you each mark your challenge on there. Then I'll show the  
24 last challenge to -- we will start with plaintiff first. Then  
25 I'll show defendant's last challenge to plaintiff so they can

1 note that accordingly. Then I go back up to the bench and  
2 finalize the remaining jurors and give the list to the judge to  
3 read.

4 MS. RIECHERT: Does that apply to the "for cause"  
5 challenges for as well or only the peremptory challenges?

6 THE CLERK: I will have to let you answer that,  
7 Your Honor.

8 MS. RIECHERT: Obviously we don't want to say, "I  
9 challenge have so and so for cause" and have argument about it  
10 in front of the panel.

11 THE COURT: I would assume it applies to the  
12 "for cause" challenges for that very reason. It wouldn't be  
13 appropriate.

14 But, Mr. Manguson, let's double-check on that, and we  
15 can be back in touch.

16 THE CLERK: Okay. Your Honor.

17 MS. RIECHERT: Also, there may be some people that  
18 are so clearly for cause that Your Honor would say that you  
19 would like them excused.

20 THE COURT: Exactly.

21 MS. RIECHERT: That's the way we usually do it;  
22 somebody who can't be unbiased, or "I know this person," or  
23 something. And beyond that, it is typically private argument  
24 on it.

25 THE COURT: Right. That's the way we've always done



1 it as well in the past, right.

2 MR. OSWALD: I want to make sure I'm not waiving  
3 anything. So if we have a "for cause" challenge in the moment,  
4 do you want us to approach the bench and make it then, or do we  
5 wait for a prearrange point and then bring you all of our  
6 "for cause" challenges at once at some point?

7 THE COURT: Let's wait and bring all "for cause"  
8 challenges at the same time, perhaps just prior to Mr. Magnuson  
9 going back and forth with the peremptory challenges.

10 MR. OSWALD: Understood, Your Honor.

11 THE COURT: Anything else for this afternoon?

12 MR. OSWALD: Nothing from plaintiff, Your Honor.

13 MS. RIECHERT: With respect to the designation of  
14 Ms. Welch, sometimes there are objections from the lawyer, and  
15 we crossed those out in the designation. Is it Your Honor's  
16 intent that those goes out and that all that comes in is the  
17 question and the answer?

18 THE COURT: I think so. It is less confusing for the  
19 jury for them.

20 MS. RIECHERT: I don't know if this is something to  
21 address. I have got to get my witnesses there, and I need to  
22 know if anything that has happened today changes the order that  
23 you gave me previously and my witnesses should be there on  
24 Friday, except for the ones you want on Tuesday.

25 MR. OSWALD: Melinda, I think that's right. That's a

1 very important subject. Let's have a call immediately after  
2 this, and I will answer your questions to your satisfaction.

3 MS. RIECHERT: Thank you.

4 THE COURT: Okay. Thank you for your time and  
5 attention this afternoon. Thank you for all of the work you  
6 put into all of the briefing that you did and working together  
7 to try to resolve a number of your disagreements. I really do  
8 appreciate that. If anything comes up between now and Monday,  
9 please email or reach out. Otherwise, I look forward to seeing  
10 you in person on Monday at one o'clock.

11 Thank you very much.

12 Court is in recess.

13 Thank you.

14 COUNSEL: Thank you.

15 (End of proceedings.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca

June 8, 2021

DENNIS W. APODACA, RDR, RMR, FCRR, CRR

DATE

Official Court Reporter

<p><b>COUNSEL:</b> [1] 34/13  <b>MR. McALPIN:</b> [1] 25/17  <b>MR. McCARTHY:</b> [20] 4/23 5/1 14/13 14/16 14/24 15/3 15/7 15/20 16/4 16/14 16/19 17/5 17/9 17/16 17/19 17/21 18/7 21/20 24/5 24/14  <b>MR. OSWALD:</b> [20] 4/8 4/16 13/21 14/15 17/17 17/20 18/10 18/14 23/8 24/20 26/24 27/6 30/14 30/24 31/4 31/9 33/1 33/9 33/11 33/24  <b>MR. PLANEUFF:</b> [4] 24/22 25/3 25/6 26/3  <b>MS. CHAMBERS:</b> [2] 17/7 17/14  <b>MS. RIECHERT:</b> [12] 4/20 7/23 26/6 31/5 31/11 32/3 32/7 32/16 32/20 33/12 33/19 34/2  <b>MS. TALCOTT:</b> [1] 5/2  <b>THE CLERK:</b> [10] 4/3 4/25 5/6 25/11 25/13 31/8 31/12 31/19 32/5 32/15  <b>THE COURT:</b> [39]</p>	<p><b>2019 [2]</b> 18/18 20/7  <b>2021 [4]</b> 1/5 4/1 5/10 36/9  <b>23rd of [1]</b> 20/20  <b>25 [2]</b> 7/11 28/15</p>
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